

Michael Bush
280 Lowell Street
Carlisle MA 01741

PRIORITY MAIL

September 7, 2021

Timothy Goddard
Town of Carlisle Administrator & ADA Coordinator
66 Westford Street
Carlisle MA 01741

**NOTICE OF CLAIM PURSUANT TO M.G.L. CH. 260 AND 42 U.S.C. § 1983 AND
DEMAND FOR RESOLUTION**

Administrator & ADA Coordinator Goddard:

This letter constitutes a Notice of Claim for unlawful conduct by town of Carlisle personnel, violations of civil rights pursuant to 42 U.S.C. § 1983 and Massachusetts General Laws Chapter 260 §5B as well as demand for resolution within the next fifteen (15) days. This letter is being mailed and/or delivered to you as the prospective respondents, pursuant to the Massachusetts Civil Rights Act.

We are concerned by the town of Carlisle's violations of applicable civil rights laws, improper promotion of misleading propaganda, the Board of Health and Select Board overstepping their authority, and those transgressions' adverse impacts on us and others.

The Gleason Public Library's current mask policy published on its website (enclosed as Exhibit 1) states that, "Masks are required out of consideration for our high usage by children who are not yet able to be vaccinated." And a recent edition of the library's email newsletter to subscribers (enclosed as Exhibit 2) states that, "Masks are still required for all visitors age 2 and up, in consideration of our high usage by as-yet-unvaccinated children and medically vulnerable individuals."

Such a policy implies that:

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1. Library personnel know and assume responsibility for the medical conditions, vaccination status, medical vulnerabilities, and medical needs of each individual in the library, and
2. By wearing masks, persons protect others from airborne germs from which certain unspecified vaccinations could otherwise protect those other people.

It is unreasonable and unwarranted for library or other town personnel to assume or claim that they know the medical conditions, vaccination status, medical vulnerabilities, and medical needs of each person in the library or other town facilities. By creating and/or implementing such a policy, the town and its personnel have effectively assumed responsibility and liability for infections and resulting illnesses that persons may contract in the library.

Additionally, on the town's website www.carlislema.gov, a pop up window displays stating that effective September 1, 2021 the Carlisle Board of Health has issued an "indoor face mask mandate for all indoor public spaces, or private spaces open to the public within the Town of Carlisle except where an individual is unable to wear a face mask due to a medical condition or disability and in employee's private work space where face masks are encouraged." This announcement is also posted at <https://www.carlislema.gov/CivicAlerts.aspx?AID=220> (See Exhibit 3 enclosed.)

The website's face mask policy announcement claims that the Board of Health issued the face mask mandate with the concurrence of the Carlisle Select Board. The statute the website's announcement cites for the Board of Health's order is M.G.L. Ch. 111 § 104. That statute does not give the Board of Health or Select Board the authority to mandate the use of face masks. That statute merely authorizes the "selectmen and board of health" to "give public notice of infected places." It does not give the Select Board or Board of Health the authority to issue widespread notices of infection that are not specific to a particular place. It certainly does not give the authority to mandate or recommend the use of medical procedures or devices, such as face masks.

Additionally, the logic for the unlawful face mask mandate the Carlisle Board of Health has issued with the concurrence of the Select Board is fundamentally flawed. It implies that the mandate is only temporary, while COVID-19 exists. The virus associated with the infectious disease COVID-19—SARS-CoV-2—mutates readily to evade suppression by vaccines, is airborne and highly transmissible, and has non-human animal reservoirs. Hence, similar to the annual influenza virus that has existed for over a century, SARS-CoV-2 cannot be eradicated and COVID-19 will be a part of life indefinitely.¹

On the website's COVID-19 page at <https://www.carlislema.gov/845/Coronavirus-COVID-19> (see Exhibit 4 enclosed), it refers to the Massachusetts Department of Public Health's latest mask advisory. Yet the page misleadingly lists places that mask advisory "requires" people to be masked while omitting the fact that Massachusetts advisory also states that: "The following persons are exempt from the face coverings requirement:

- Children under 5 years old.

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- Persons for whom a face mask or covering creates a health risk or is not safe because of any of the following conditions or circumstances:
 - the face mask or covering affects the person's ability to breathe safely;
 - the person has a mental health or other medical diagnosis that advises against wearing a face mask or covering;
 - the person has a disability that prevents them from wearing a face mask or covering; or
 - the person depends on supplemental oxygen to breathe.”

By requiring persons to wear masks without having specified that those masks be tested, effective, or approved for the function of preventing the spread of infections, the town of Carlisle has made false and misleading claims. The U.S. Food and Drug Administration's (FDA) Emergency Use Authorization (EUA) for surgical and/or cloth masks requires that, “The product is not labeled in such a manner that would misrepresent the product's intended use; for example, the labeling must not state or imply that the product is intended for antimicrobial or antiviral protection or related uses or is for use such as infection prevention or reduction.”

The statute granting the FDA the power to authorize a medical product for emergency use requires that the person being administered the product be advised of his or her right to refuse administration of the product. This statute further recognizes the well-settled doctrine that medical experiments, or “clinical research,” may not be performed on human subjects without the express, informed consent of the individual receiving treatment. As C.F.R. § 50.20 states, “An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative.”

The COVID-19 page on the Carlisle website links to a document titled Understanding Masks To Protect Children Against COVID-19 (enclosed as Exhibit 5). That document is misleading in a number of respects. First, the title and theme of it implies that children need protection from COVID-19, which is false.² (See Exhibit 6 enclosed.) Influenza presents a minuscule mortality risk to children in the first place, yet COVID-19 presents even less of a risk to children than influenza does. Second, the document implies that putting masks that do not block viruses on children protects children from COVID-19. That is illogical and nowhere in that document was that assertion truly substantiated. Instead, the basis of the document was speculation and wishful thinking. While much pseudoscience has been quoted in that document and elsewhere to suggest wearing masks to prevent viral respiratory infections, truly relevant facts and the most credible scientific studies reveal that masks are not effective for prevention of the spread of COVID-19³. Additionally, wearing masks has known harms to children and adults⁴ and ⁵. For the town of Carlisle to publish or promote such phobia-mongering, specious propaganda as that document is an egregious misuse of taxes and town resources. We as residents and taxpayers do not consent to that.

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The fact is, masks are not approved to prevent the spread of viral respiratory infections. An EUA from the FDA, mentioned above, is for products of an investigational or experimental nature. The town's and Gleason Library's websites policies and COVID pages failed to disclose that the mask requirement and advisory is experimental and that wearing masks is known to be harmful.

As Article II of the Constitution of the Commonwealth of Massachusetts states, "no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience..." Some religions, creeds, physical disabilities, and/or mental disabilities prohibit or contraindicate the wearing of masks or face coverings or the partaking of vaccinations. Therefore, the town's published mask policies violate both our Massachusetts Constitutional rights as well as M.G.L. Chapter 272 § 92A, which prohibits public accommodations from depriving people of any, "religious sect, creed... deafness or blindness, or any physical or mental disability" of the "full enjoyment of the accommodations, advantages, facilities or privileges offered to the general public." Further, the statute states that, "Any person who shall violate any provision of this section, or who shall aid in or incite, cause or bring about, in whole or in part, such a violation shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than thirty days, or both."

Michael Bush informed town of Carlisle personnel Board of Health Agent Linda Fantasia and Gleason Public Library Director Martha Feeney-Patten via email in March 2021 that because of such propaganda and longstanding face mask policies put forth by the town, he had been subjected to harassment and unlawful discrimination. Both Board of Health Agent Fantasia and Director Feeney-Patten replied to Mr. Bush's message, acknowledging his concerns yet providing no resolution in accordance with the law.

We will no longer tolerate such callous, unlawful discrimination by town entities or personnel. Nor will we tolerate the Select Board or Board of Health overstepping their authority. As these mask policies have violated our and others' federal and Massachusetts civil rights, pursuant to M.G.L. Ch. 265 Section 37, Select Board members, Board of Health staff and members, library personnel, or any other personnel communicating or implementing such unlawful policies may each personally be, "fined not more than one thousand dollars or imprisoned not more than one year or both; and if bodily injury results, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than ten years, or both."

The mask policies are in violation of Title 18 U.S.C. § 242 - Deprivation Of Rights Under Color Of Law. Personnel having created, communicated, or attempted to enforce such policies in violation of civil rights laws may be charged and/or sued for such violation(s) pursuant to Title 42 U.S.C. § 1983 - Civil Rights Action For Deprivation Of Rights.

We therefore demand that within the next fifteen (15) days the town of Carlisle:

1. Rescind and remove the above-identified misleading and unlawful documents and policies pertaining to face masks and vaccinations,
2. The Board of Health inform businesses open to the public in town of that face mask mandate's rescission and that no one may be denied entry or service due to their

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- religious sect, deafness or blindness, or any physical or mental disability that keeps them from wearing a face mask and they are not to be questioned about it,
3. Notify the Carlisle Mosquito newspaper of the rescission of the policies,
 4. And choose either of the following:
 - a. If the town and its personnel wish to assume legal liability for airborne viral infections, the harassment such a policy causes people, as well as the harms of masks, issue a town policy (1) suggesting people wear masks in town facilities with the acknowledgment that masks are experimental and have known and unknown harms (2) acknowledging that masks are not approved by the FDA to prevent infections, and (3) regardless of whether people wear masks or have been vaccinated, they shall not be questioned or approached about either and shall be afforded full enjoyment of the accommodations, advantages, facilities or privileges offered to the general public, or
 - b. If the town and its personnel prefer to avoid collective and/or personal legal liability for harassment, airborne viral infections, discrimination, unlawful actions, and harms related to masks or vaccinations, simply refrain from issuing rules, policies, mandates, or advisories regarding masks or vaccinations and refrain from communicating or attempting to implement any other entities' such mandates, advisories, etc.

Should you fail to provide the demanded relief within fifteen days, we may collectively and/or individually pursue the remedies available to us in preserving our legal rights and obtaining monetary and/or other redress. You may respond in writing to us collectively using Michael Bush's name and address.

Sincerely,

Michael Bush

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¹ <https://www.wsj.com/articles/zero-covid-coronavirus-pandemic-lockdowns-china-australia-new-zealand-11628101945>

² <https://www.wsj.com/articles/cdc-covid-19-coronavirus-vaccine-side-effects-hospitalization-kids-11626706868>

³ <https://www.acpjournals.org/doi/10.7326/M20-6817>

⁴ <https://www.bmj.com/content/370/bmj.m3021/rr-6>

⁵ <https://www.mdpi.com/1660-4601/18/8/4344/htm>